



## 20 CFR Part 220

RIN 3220–AB77

### Consultative Examinations

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** The Railroad Retirement Board amends its regulations concerning consultative examinations used in adjudication of claims for disability annuities. The amendment permits psychological and psychiatric consultative examinations to be conducted through the use of video teleconferencing technology. The amendment allows the remote conduct of examinations where physical contact is not required and facilitates medical evaluations when physical proximity is not feasible.

**DATES:** This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, (312) 751-4945, TTD (312) 751-4701, [Marguerite.Dadabo@rrb.gov](mailto:Marguerite.Dadabo@rrb.gov).

**SUPPLEMENTARY INFORMATION:** The Railroad Retirement Board (Board) amends its disability regulations to allow video teleconferencing technology (VTT) to be used to conduct a psychological or a psychiatric consultative examination in a case where such technology permits proper evaluation of a claimant. A VTT consultative examination is an examination conducted through a telecommunications system that allows the examining physician or psychologist and the claimant to see and hear each other for the purpose of communication in real time. A VTT consultative examination must comply with all requirements for consultative examinations in subpart G of part 220 of the Board's regulations, 20 CFR part 220, subpart G. In addition, the following requirements must be followed if a VTT consultative examination is used. The

examining physician or psychologist must be currently licensed in the state in which the provider practices.

The examining physician or psychologist must have the training and experience to perform the type of examination requested. The examining physician or psychologist must have access to VTT, and the claimant must live in the same state in which the provider practices. The claimant shall have the right to refuse a VTT consultative examination without penalty.

A proposed rule was published on February 3, 2022, and comments were requested by April 4, 2022, 87 FR 6094, February 3, 2022. One comment was submitted. While expressing support for the proposed change as “a positive change by the agency to embrace the technological transformation,” the commenter quoted the proposed sentence in § 220.57(c)(2), which states that “[t]he examining physician or psychologist has the training and experience to perform the type of examination requested” and commented that this statement does not quantify the required minimum years of experience for the examining physician or psychologist. The commenter explained that unless years of experience are specified, any physician with just 1 prior experience of performing such kind of examination will be qualified and suggested that the minimum number of years of experience be added to the clause to avoid any confusion and make the rule clear. The Board considered the commenter’s suggestion, but decided not to quantify a minimum number of years of experience to use VTT as the examining physician or psychologist would be licensed and in good standing in the state in which he or she practices and would have the training and experience necessary to perform the type of examination or test required.

No changes were made in the proposed rule, which is now being published as a final regulation.

## **REGULATORY REQUIREMENTS**

### **Executive Order 12866, as Supplemented by Executive Order 13563**

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

### **Executive Order 13132 (Federalism)**

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Board believes that this final rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### **Regulatory Flexibility Act**

We certify that this final rule would not have a significant economic impact on a substantial number of small entities because the final rule affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

### **Unfunded Mandates Reform Act of 1995**

This final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### **Paperwork Reduction Act**

This final rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

## List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

For the reasons discussed in the preamble, the Railroad Retirement Board amends 20 CFR part 220 as follows:

### **PART 220 – DETERMINING DISABILITY**

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

2. Amend § 220.57 by adding paragraph (c) to read as follows:

#### **§ 220.57 Types of purchased examinations and selection of sources.**

\* \* \* \* \*

(c) *Use of video teleconferencing technology.* Video teleconferencing technology (VTT) may be used for a psychological or a psychiatric consultative examination provided that the following requirements are met:

- (1) The examining physician or psychologist is currently state-licensed in the state in which the provider practices;
- (2) The examining physician or psychologist has the training and experience to perform the type of examination requested;
- (3) The examining physician or psychologist has access to video teleconferencing technology;
- (4) The examining physician or psychologist is permitted to perform the exam in accordance with state licensing laws and regulations;
- (5) The protocol for the examination does not require physical contact;
- (6) The claimant has the right to refuse a VTT examination without penalty; and
- (7) The VTT examination complies with all requirements in this subpart governing consultative examinations.

Dated: May 4, 2022

**For the Board.**

Stephanie Hillyard,  
Secretary to the Board.

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